IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5795 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

NATIONAL ORGANIC CHEMICAL INDUSTRIES LIMITED

Versus

TUKARAM KESHAVRAO PAGARE

Appearance:

1. Special Civil Application No. 5795 of 1998
M/S TRIVEDI & GUPTA for Petitioner No. 1
MR AD DESAI for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/06/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court by way of this petition under Article 227 of the Constitution of India challenging the award made by Labour Court, Vadodara in Reference (L.C.V.) No.658 of 1985 dated 4th December, 1997.

1.1. According to the petitioner the respondent at the relevant time was working as Welder in the factory of the petitioner which is engaged in the manufacturing of plastic articles. In view of one incident that took place on 22nd June, 1985 wherein the respondent is alleged to have assaulted a co-worker with a punch and caused injury on his face. In view of this incident a departmental inquiry was held against the respondent. At the conclusion of the inquiry the respondent was found guilty of committing misconduct alleged against him and ultimately vide order dated 26th August, 1985 the respondent was dismissed from service of the petitioner. The respondent challenged this order by raising dispute under the provision of Industrial Disputes Act and Reference under Section 10 (1) (c) was made before the Labour Court which came to be numbered as aforesaid. Upon conclusion of the proceedings the Labour Court vide order dated 4th December, 1997 partly allowed the reference and directed the petitioner to reinstate the respondent with continuity of service and 50% of backwages of the last salary drawn. The petitioner has, therefore, approached this Court to challenge the said award.

2. Mr.Anup Krishnan learned counsel for the petitioner appearing for M/s. Trivedi & Gupta submitted that the award of Labour court is beyond its jurisdiction inasmuch as there is no perversity, illegality or irregularity committed by the disciplinary authority. He has further submitted that looking to the nature of the misconduct committed by the respondent the only punishment that could have been awarded to him is dismissal from service and, therefore, the action taken against the respondent was proper. He has further submitted that the award passed by the Labour Court is very lenient and it is required to be quashed and set aside. In support of his contention, Mr.Krishnan has relied on three decisions namely; a decision rendered in the case of Gujarat State Road Transport Corporation v. Prabhashanker K. Acharya reported in 1992 (2) G.L.H. 354; a decision rendered in the case of Division Controller, GSRTC v. Ratansing K. Thakore reported in 1997 (2) G.L.H. 230 and a decision in the case of Rajkot Municipal Corporation v. Navinchandra I. Vyas reported in 1997 (2) G.L.H. 331. All these decisions prescribe the scope of Labour Court while interfering with the decision of the disciplinary authority in the matter of impositition of penalty upon the delinquent.

3. Looking to the facts of the case it clearly appears that the incident in question happened while the

present respondent and his co-worker were having some fun. Subsequently that resulted into hot exchange of words and it also appears that the co-worker first abused the respondent which enraged him and in such state of mind he gave one punch on the face of his co-worker. This resulted into causing some bleeding injury. However, looking to the entire background of the incident it cannot be said that the respondent right from the beginning had intention to cause that injury to the co-worker and for that very purpose he assaulted him. It is very unfortunate that the fun which they were having ultimately turned into an ugly incident, but it clearly appears that the respondent was not at all at fault. It is a matter of common knowledge that nobody would tolerate any abuse hurled at him by others. In the present case, both of them namely the respondent as well as the co-worker were merely having fun and there was no earthly reason for the co-worker to abuse the respondent. It therefore appears that in the heat of the moment this incident had taken place. The disciplinary authority without considering the entire background of the incident has taken a decision to impose punishment which would result into economic death of the respondent. Such a decision can simply be termed as perverse. In my opinion, therefore, the Labour Court was absolutely within its limit to set aside that punishment and to pass the award in the terms stated above. The decision cited above by Mr.Krishnan do not totally prohibit or bar the jurisdiction of the Labour Court to interfere with the penalty imposed by the disciplinary authority and they have carved out certain exceptions in which perverse decision of the disciplinary authority is included. These decisions also give liberty to the Labour Court to interfere with the quantum of punishment when the same is found to be grossly disproportionate vis-a-vis the alleged misconduct. In the background and under the circumstance narrated above the misconduct of respondent cannot be said to be that serious which would warrant dismissal of the respondent from service. In view thereof the penalty imposed by disciplinary authority can certainly be termed as "grossly out of proportion". On that ground also the Labour Court was well within its bound to quash and set aside the decision of the disciplinary authority.

In the result I do not find any merit in this petition and the same is required to be dismissed. The petition is, therefore, ordered to be dismissed with no order as to costs. Rule is discharged. Interim relief is vacated.

18.6.2002 [Akshay H. Mehta, J.]

/phalguni/